IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

RPFC.No. 255 of 2006()

AGAINST THE ORDER IN MC 195/2004 AND CMP.1739/05 IN MC.195/04 AND CMP.570/05 IN MC195/2004 ON THE FILE OF THE FAMILY COURT, KOZHIKODE

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REVISION PETITIONER/RESPONDENT/PETITIONER :

T.V.THOMAS, S/O.VARGHESE
AGED 45 YEARS
THYPARAMBIL HOUSE
CHEKKIDIKKADAVU P.O.
EDATHWA VIA, ALAPPUZHA DIST.

BY ADV. SRI.P.K.RAMKUMAR

RESPONDENTS/PETITIONER/RESPONDENT:

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1. JASEENTHA, AGED 43 YEARS
   D/O. JOSEPH

2. TINSY, AGED 15 YEARS
   D/O. T.V.THOMAS,

3. TEENA MOL, AGED 15 YEARS
   D/O. T.V.THOMAS

RESPONDENTS 2 AND 3 ARE RESPRESENTED BY THEIR MOTHER, THE FIRST RESPONDENT JASEENTHA, THYPARAMBIL HOUSE, KOODARANHI POST, KOZHIKODE

BY ADV. SRI.A.X.VARGHESE for R1 to R3

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

R.P.(F.C.) No.255 of 2006

Dated this the 5th day of December, 2006

ORDER

The respondents herein filed M.C. 195 of 2004 against the petitioner herein under Section 125 of the Code of Criminal Procedure claiming maintenance. A sum of Rs.2,000/- was claimed for the first respondent wife and a sum of Rs.1,500/- each was claimed for respondents 2 and 3, from 22.6.2004, the date of M.C.195/2004. The Family Court set the petitioner herein ex-parte and an order was passed on 30.9.2004 granting maintenance to the respondents herein as claimed in the petition. The order does not show that the court has considered the case on the merits while fixing the quantum of maintenance, though the petitioner husband was absent before the court.

2. The petitioner filed C.M.P.No.1739/2005 before the Family Court to set aside the ex-parte order. In the application to set aside the ex-parte order, the petitioner stated that the respondents herein had filed M.C.425 of 2002 earlier and that case was settled between the parties and that MC was dismissed.

It is stated further thus: “Since the matter was settled and MC was settled and dismissed, I am not aware of any other proceedings from the respondent. But by suppressing the settlement and dismissal of the MC 425/2002, the respondent filed another MC 195/2004. Now only I came to know about these petitions”. The court below dismissed of CMP 1739/2005 by order dated 24th June 2006. In that order, it is stated that there is nothing to suggest that after filing the petition, the matter was settled between the parties. The court below was under the erroneous impression that the case of the petitioner herein is that the present MC namely, MC 195 of 2004 was settled. The case of the petitioner is not that at all. His case is that there was an earlier proceeding as M.C. No. 425 of 2002 and that was settled. He also contended that thereafter he did not receive any notice in the present proceedings. This contention is not at all considered by the court below. In these circumstances, I am inclined to set aside the order dated 24th June 2006 and to allow C.M.P.No.1739 of 2005. I am inclined to do so and also to set aside the order dated 30th September 2004

because in the order dated 30th September 2004 in the MC 195/2004, there is no discussion as to the means of the husband, the amount which is necessary for the maintenance of the wife and children, whether the wife has means to maintain herself and other relevant considerations under Section 125 of Crl.P.C. The fact remains that the husband was not present before court before passing the order of maintenance and awarding a total sum of Rs.5,000/- per month as maintenance to the wife and children. Therefore, it is only just and proper that the matter is heard on the merits by the Family Court after affording an opportunity to the husband to put forward his case. But granting such an opportunity should not be without any condition. The maintenance now ordered is Rs.5,000/- per month, I am of the view that the petitioner should be directed to deposit a sum of Rs.60,000/- as a condition for setting aside the ex-parte order dated 30th September 2004.

In the result, RPFC is allowed. The order dated 24th June 2006 is set aside, C.M.P. No. 1739 of 2005 is allowed and the order dated 30th September 2004 in MC 194/2004 is set aside on

condition that the petitioner herein shall deposit for payment to the respondents a sum of Rs.60,000/- (Rupees sixty thousand only) within a period of two months. If the petitioner fails to make the deposit, this RPFC shall stand dismissed and the orders dated 30th September 2004 and 24th June 2006 shall stand revived. The parties shall appear before the Family Court on 20th December 2006.

K.T.SANKARAN,
JUDGE

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